Supreme Court, U.S.
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NO. 91-77

IN THE

Supreme Court of the United States

October Term, 1991

DENNIS EDWARD RYAN,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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August 9, 1991

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent respectfully requests that the petition for writ of certiorari filed herein be denied, for the following reasons.

QUESTIONS PRESENTED

1. Whether the Supreme Court of the State of Colorado ruled correctly in upholding the constitutionality of the Colorado criminal libel statute, section 18-13-105, 8B Colorado Revised Statutes (1986), where, as here, one private person has disparaged the reputation of another private person by disseminating libelous publications?

2. Whether the Supreme Court of the United States should issue a writ of certiorari while the state criminal prosecution for criminal libel remains pending against the Petitioner in the District Court of Larimer County, State of Colorado?

3. Whether the Petitioner can now raise issues on certiorari review that were decided against him by the state trial court but not cross-appealed to the Supreme Court of the State of Colorado?

JURISDICTION

The Supreme Court of the United States should deny the petition in this case where the state criminal prosecution for criminal libel remains pending against the Petitioner in the District Court of Larimer County, State of Colorado.

The defendant should not be permitted to raise issues on certiorari review that were decided against him by the District Court of Larimer County, State of Colorado, but not cross-appealed to the Supreme Court of the State of Colorado.

STATUTES INVOLVED

Section 18-13-105, 8B Colorado Revised Statutes (1986):

18-13-105. Criminal libel. (1) A person who shall knowingly publish or disseminate, either by written instrument, sign, pictures, or the like, any statement or object tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation or expose the natural defects of one who is alive, and thereby expose him to public hatred, contempt, or ridicule, commits criminal libel.

(2) It shall be an affirmative defense that the publication was true, except libels tending to blacken the memory of the dead and libels tending to expose the natural defects of the living.

(3) Criminal libel is a class 5 felony.

STATEMENT OF THE CASE

This is a state criminal prosecution in which the Petitioner, Dennis Edward Ryan, is charged with criminal libel in the District Court of Larimer County, State of Colorado ("state district court"). The charge was filed on April 13, 1989, pursuant to section 18-13-105, 8B Colorado Revised Statutes (1986), as previously set forth.

The crime of criminal libel is alleged to have occurred between March 1, 1989, and April 10, 1989. After the victim ended a personal relationship with the Petitioner, he mailed fictitious wanted posters to several Fort Collins, Colorado, businesses. The wanted posters pictured the victim and stated her name, address, physical description, biographical information, and claimed that she was wanted for a number of crimes including spouse abuse, child abuse, sex abuse, abuse of the elderly, prostitution, assault, larceny, theft, and fraud. The wanted posters also stated that the victim had harbored various forms of VD, that she was a high risk for AIDS, and that she frequented bars in the company of men with the longest hair and/or the best contraband. The wanted posters offered a $3,000 reward for information leading to the criminal or civil prosecution of the victim, and instructed readers to send inquiry and/or information to a post office box in Iowa City, Iowa, which listed to the Petitioner. The allegations in the wanted posters regarding the victim's criminal record and sexual history were false.

A preliminary hearing was held in the state district court and probable cause found that the Petitioner had committed the crime charged. He was bound over for trial. Thereafter, the Petitioner filed a pretrial motion to dismiss the criminal libel charge on the ground that the statute was unconstitutional. The state district court granted the motion. In ruling, the state district court first accorded the Petitioner standing to raise the issue of the statute's facial constitutionality as applied to public figures, and then held that the statute was facially unconstitutional because it did not contain an element of actual malice requiring that the defamatory statement be made with knowledge of its falsity or in reckless disregard of whether it was true or false, a situation which would apply to false statements made against public officials. The state district court determined that the statute was constitutional as applied to the Petitioner because his conduct involved defamatory statements made against a private individual. The state district court further determined that the statute was not void for vagueness. The People appealed to the Supreme Court of the State of Colorado on December 8, 1989. The Petitioner did not file a cross-appeal. On March 11, 1991, the Supreme Court of the State of Colorado reversed the district court's ruling of facial unconstitutionality and remanded the case for reinstatement of the charge against the Petitioner. *People v. Ryan,* 806 P.2d 935 (Colo. 1991). The case is presently pending in the state district court.

REASONS FOR DENYING THE WRIT

The Petitioner lacks standing to challenge the Colorado criminal libel statute on facial overbreadth grounds since his conduct falls within the legitimate reach of the statute, as he himself concedes. *People v. Ryan,* 806 P.2d at 937, footnote 5; *Broadrick v. Oklahoma,* 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed 2d 830 (1973). Moreover, the state district court determined that the statute could be applied constitutionally to the Petitioner's conduct since it disparaged the reputation of a private person, plus the Petitioner did not cross-appeal on this ground. The state district court further held that the statute was not vague, and the Petitioner did not cross-appeal this part of the ruling also. On this basis, the writ should be denied.

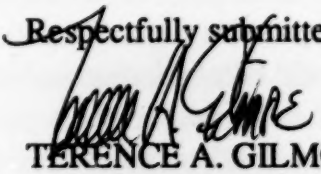
The actual malice standard has no applicability here where the victim is a private person and the defamatory publication does not involve a matter of public concern. In this regard, the Supreme Court of the State of Colorado ruled correctly in upholding the statute to the extent that it criminalizes libelous attacks where one individual has disparaged the reputation of another private person. *People v. Ryan,* 806 P.2d at 941; *Gertz v. Welch,* 418 U.S. 323, 94 S.Ct. 2997, 86 L.Ed 2d 789 (1974); *Dun & Bradstreet v. Greenmoss Builders,* 472 U.S. 749, 105 S.Ct. 2939, 86 L.Ed 2d 593 (1985).

Finally, the Respondent contends that the Petitioner should not be allowed to obtain on an interlocutory basis the issuance of a writ of certiorari while the state criminal prosecution remains pending, as here. Cf. *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed 2d 669 (1971).

CONCLUSION

For the foregoing reasons, the issues presented by the Petitioner are not properly postured for review by certiorari in the Supreme Court of the United States, and the petition should therefore be denied.

Respectfully submitted,



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